

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, denying extension of bentonite prospecting permits W-38620, W-69569, W-72492, and W-72972.

Affirmed.

1. Mineral Lands: Prospecting Permits

A holder of a prospecting permit who seeks an extension of the permit must justify the request for more time to prospect. Where the information provided by the permittee to support extension fails to show either that reasonably diligent exploration efforts have been made or that the failure to perform exploration work was the result of circumstances beyond the control of the permittee, the extension request is properly denied.

APPEARANCES: A. J. Maurer, Jr., pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

A. J. Maurer, Jr., Deloris M. Maurer, Pauline C. Olson, and R. A. Nichols have appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated January 21, 1986, rejecting appellants' request for a 2-year extension of bentonite prospecting permits W-38620, W-69569, W-72492, and W-72972.

The prospecting permits in question were issued to appellants by BLM with an effective date of December 1, 1983, for a period of 2 years, for lands in Weston County, Wyoming. ^{1/} On November 13, 1985, the Wyoming State Office received a letter from appellants requesting renewal of the permits. Appellants explained:

Recently International Minerals & Chemical Corporation has shown an interest in exploring lands covered by several Federal Prospecting Permits held in the name of A. J. Maurer, Jr.

^{1/} Permit W-38620 was issued in the names of all four of the listed appellants. The other three permits were issued in the name of A. J. Maurer, Jr.

Of these, four will expire December 1, 1985. International Minerals & Chemical Corporation is currently mapping the geology and sampling bentonite outcrops where available to determine if these lands hold any potential for development. Due to their recent interest, I would like to have the [four] prospecting permits renewed * * *.

By letter dated November 15, 1985, BLM notified appellants that it had received the extension request. The letter further informed appellants that they had failed to supply any of the information required by 43 CFR 3511.3-2(b) (1985) to support the request. Accordingly, BLM allowed appellants 30 days in which to submit the necessary information. In response to BLM's notice, A. J. Maurer, Jr., wrote to the State Office, explaining:

I am sorry to report that I have been having a serious health problem for over a year now, for which I have had Surgical Removal of the malignancy and am still being medically treated as well as returning to Mayo Clinic for examination and treatment periodically. May we please have a two year extension as I attempted to interest several Companies processing bentonite in our permits since the time of issuance and was finally successful to the extent that International Mineral and Chemical Corporation signed an option to prospect the properties late last spring and have only recently tentatively scheduled it into their operation.

BLM also received on November 29, 1985, a geologic report from a geologist with International Minerals & Chemical Corporation (IMC), the company to which Maurer had made reference in his initial request for an extension of the permits. In this one page report, the IMC geologist stated:

Geologic Report [for] Federal Prospecting Permits W-38620, W-69569, W-72972, and W-72492

I have mapped the geology of the areas covered by the above Federal Prospecting Permits (see enclosure). The following is a brief summary of the geology and potential for bentonite on the properties:

W-38620

The entire property has Belle Fourche Shale at the surface; good potential for bentonite bed C.

W-69569

The area is on the Thornton Dome; outcrops of Skull Creek Shale, Newcastle Formation, Mowry and Belle Fourche Shales are present. There is potential for bentonite beds A, B, and C on this property.

W-72972

Outcrops of Mowry and Belle Fourche Shales; potential for bentonite beds A, B and C.

W-72492

Outcrops of Newcastle Formation and Mowry Shale; potential for bentonite beds A and B.

This report was accompanied by a photocopy of a topographical map upon which the geologist had depicted the findings in the report for the areas covered by the permits.

The extension application and materials in support thereof were then referred to the Casper, Wyoming, BLM District Manager, the field officer with management authority over the lands included in appellants' prospecting permits, for his recommendations. In a memorandum dated January 10, 1986, the District Manager recommended that the extension request be denied and outlined his rationale:

No exploration has been done on any of the permits. A possible exception could be a map representing a field mapping * * * submitted by geologist Michael Wilczynski of International Minerals and Chemical Corporation. This map would be classified as a reconnaissance map and would not meet the requirements in the terms of the permits specifying substantial mapping in lieu of drilling.

If this map * * * was done in the field in November 1984, no samples were taken or outcrops of bentonite noted. Therefore, we question the authenticity of it being a field map. The geologic formations noted on the map resemble those on a geologic quadrangle map published by the [United States Geological Survey] in Bull. 1181J.

A written notice of field work causing no surface disturbance, as required in the permit terms, was not submitted to the Casper District Manager prior to the so-called field mapping.

Mr. Maurer's letter requesting an extension gave no valid explanation why reasonable diligence in exploring to determine the existence or workability of the deposits was not done.

The District Manager's findings were then incorporated into the State Office's January 21, 1986, decision denying the extension.

[1] At the time of the BLM decision denying appellants' extension request, extensions for prospecting permits were governed by the regulations

at 43 CFR 3511.3 (1985). 2/ As clearly stated in these regulations, the granting of an extension is within the discretion of the Secretary and is contingent upon a clear showing that the extension is justified. 43 CFR 3511.3-1(b) (1985). The Board has stated that "[t]he clear thrust of the Departmental regulations is to require that an applicant for an extension to a currently valid prospecting permit must justify a request for more time to prospect." Inverness Mining Co., 81 IBLA 78 (1984). A review of the regulations demonstrates that an applicant must essentially show one of two things to justify an extension. First, the applicant can show further time is needed because the permittee has been unable with reasonable diligence to determine the existence of valuable deposits covered by the permit. This showing can include evidence that "at least one adequate test well or other comparable prospecting," such as substantial geological mapping, geochemical surveys, ground and aerial geophysical surveys, or sampling of outcrops and old workings has been performed. 43 CFR 3511.3-1(b)(1) and (2) (1985); see Stipulations Nos. 2 and 4, Bentonite Prospecting Permit Stipulations, attached to permits. 3/ Second, a permittee can justify an extension by showing that his failure to perform diligent prospecting activities was due to "conditions beyond his control." 43 CFR 3511.3-1(b)(3) (1985). 4/

In their statement of reasons for appeal, appellants take issue with BLM's conclusion that the geologic information contained in the IMC geologist's report failed to show justification for an extension. BLM, in its decision, expressly found that the geologic report submitted by IMC for appellants did not "meet the requirements in the terms of the permits specifying substantial mapping in lieu of drilling." We agree. A review of this report gives no indication that the single instance of geologic mapping was anything more than "reconnaissance" mapping as characterized by BLM. Further, the BLM district manager's finding that the information in the geologist's report could be gleaned from a published map has not been

2/ The regulations governing issuance of noncoal solid mineral leasing and prospecting under the Mineral Leasing Act of 1920 were significantly revised in 1986. 51 FR 15204 (Apr. 22, 1986). Under the revision, each of the solid minerals subject to leasing and prospecting is treated individually. The provisions for extensions of bentonite prospecting permits are presently found at 43 CFR 3562.9.

3/ The regulations provided that the requirement to drill one adequate test well or perform other comparable prospecting could be waived "upon a satisfactory showing that the failure * * * was directly attributable to the shortage of equipment or labor essential to the prescribed prospecting." 43 CFR 3511.3-1(b)(2) (1985).

4/ The 1986 revision of the regulations, see note 2, supra, did not alter the requirement that the permittee show reasonable diligence or conditions beyond his control. 43 CFR 3562.9-1(a) and (b).

refuted by appellants. 5/ It was, therefore, reasonable for BLM to conclude that the map submitted did not demonstrate a sufficiently diligent effort to determine the existence of valuable deposits with the permitted area. 6/

Appellants also argue on appeal that the "physical health problems that [A. J. Maurer, Jr.] has encountered in the last year should be construed as a valid explanation of why no [other] exploration work has been performed." BLM's decision does not directly address the health issue raised by appellants, concluding only that "Maurer's letter requesting an extension gave no valid explanation why reasonable diligence in exploring to determine the existence or workability of the deposits was not done." The regulation provides that a "permittee's failure to perform diligent prospecting activities" must be beyond the permittee's control in order to qualify for an exemption. 43 CFR 3511.3-1(b)(3) (1985). In their December 13, 1985, letter to BLM, appellants did not show or even allege that A. J. Maurer's health problems in any way prevented exploration activity from occurring. To the contrary, the same letter informed BLM that Maurer had attempted "since the time of issuance" of the permits to interest several companies in the exploration of the permits and had indeed been successful "to the extent [IMC] signed an option to prospect the properties late last spring." Thus, while we in no way seek to de-emphasize the seriousness of his illness, we nevertheless find, given that Maurer continued to seek and had secured means to perform exploration work, that it was reasonable for BLM to conclude the illness was not the proximate cause of appellants' failure to perform diligent prospecting activities, and thus was not a "valid explanation why reasonable diligence in exploring" had not occurred.

5/ The fact that bentonite beds underlay the permit area was well-known prior to the issuance of these permits. Thus, in a memorandum dated Apr. 15, 1983, from the District Mining Supervisor, Casper, to the Acting Chief, Branch of Solid Minerals, Wyoming State Office, recommending issuance of the prospecting permit, the District Mining Supervisor observed that "[r]ecords available to our office indicate the existence of bentonite underlying the subject applications (see attached memorandum) but exploration will be necessary to delineate deposits of satisfactory quality and quantity to warrant further development."

6/ Assertions made by appellants on appeal lead us to the conclusion that the report can be rejected on other grounds. Appellants assert that the IMC geologist "had detailed information concerning land adjacent to the area permitted, and had access to other geologic and external conditions in the surrounding area, which were used in the preparation of the geologic map" (Statement of Reasons at 1).

The function of a prospecting permit is to allow the permittee a period of time in which to determine whether a valuable deposit of the mineral sought exists within the boundaries of the permit. If a discovery is made, the permittee can apply for and receive a preference right mineral lease. 43 CFR Subpart 3563; see 43 CFR 3521.1 (1985). One of the fundamental rules governing the adjudication of whether there has been a discovery of a valuable deposit is that the discovery must be made within the boundaries of

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Wm. Philip Horton
Chief Administrative Judge

fn. 6 (continued)

the permit during the life of the permit. The Hanna Mining Co., 20 IBLA 149 (1975). In order to establish that a discovery has been made, there must be a physical exposure of the deposit within the boundaries of the permit. Here, appellant has acknowledged that the geologic mapping was done from information concerning land outside the permit boundaries. While this information might be helpful in evaluating the mineral resources on permit lands, it could not, absent actual exploration work within the permit boundaries, be considered as an exploration activity leading to the discovery of a valuable mineral. Thus, to the extent that the report was prepared solely from information obtained from land outside the permit boundaries, it likewise could not be considered as reasonably diligent exploration activity sufficient to merit an extension.